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7 Attorneys for Defendant:  
WEN YUEH LU

**FILED**  
DISTRICT COURT OF GUAM

JAN 11 2007 *WSE*

MARY L.M. MORAN  
CLERK OF COURT

8  
9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF GUAM**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 WEN YUEH LU,

15 Defendant.

MAGISTRATE CASE NO. 06-00031

**MOTION FOR MODIFICATION  
OF RELEASE BAIL CONDITIONS;  
MEMORANDUM IN SUPPORT  
OF MOTION**

16  
17 **MOTION**

18 COMES NOW Defendant WEN YUEH LU, through counsel undersigned,  
19 and brings this Motion pursuant to 18 U.S.C. §3142(b) and (c). Defendant WEN YUEH LU  
20 has been held in Guam by virtue of order confining him to Guam, surrender of Taiwanese  
21 passport and periodic reporting to the Government, per that prior Order of this Court  
22 entered on December 13, 2006.

23 Defendant requests that he be released and freed of any conditions to permit  
24 his travel overseas based on the Law of the Sea Treaty, Article 73. Defendant incorporates  
25 by reference as if fully set forth herein his Petition for Writ of Habeas Corpus filed

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**ORIGINAL**

4 December 22, 2006, Exhibit "1", attached to Declaration of Counsel. This Motion is based  
5 on the Declaration of Counsel filed herewith, accompanying Memorandum of Points and  
6 Authorities and any evidence which may be presented at the hearing of this matter.  
7 Defendant Lu respectfully requests that he be released and set free without any conditions  
8 as soon as possible.

9  
10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. BACKGROUND.**

12 Defendant WEN YUEH LU is a Taiwanese fifty-eight (58) year old man.  
13 Defendant was born in Taiwan (Republic of China). He has been married since 1968, and  
14 the couple have two children. While unemployed at present, Mr. Lu has a sterling career  
15 of 32 years on the ocean as a ship's captain or fishmaster. No criminal record of arrest or  
16 conviction exists in the world.

17  
18 **II. LAW OF THE SEA TREATY.**

19 On December 12, 2006, Defendant filed his Motion for Release or to Reduce  
20 Bail Conditions; Memorandum in Support of Motion. See, Motion for Release or to Reduce  
21 Bail Conditions, December 12, 2006 Therein, at page 8, Defendant expressly argued in  
22 writing to this Court that the United Nation's Law of the Sea Treaty ("LOS Treaty"), as  
23 adopted by the President of the United States of America, compels this Court to observe  
24 customary international law. The United States District Court decisions in Lauritzen and  
25 US v. Royal Caribbean Cruises, Ltd., affirm the positive and common law effect of the Rules

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4 of customary international law.

5 On December 12, 2006, the text from the LOS Treaty Article 73 was quoted:

6 **2. Arrested vessels and their crew should be promptly**  
7 **released upon the posting of reasonable bond or other**  
8 **security. (Emphasis added).**

8 Id. at p. 8.

9 At hearing held on December 13, 2006, the Court imposed a bail release  
10 condition of a \$5,000.00 cash deposit. This is the maximum fine for the offense charged.  
11 Despite the fact that Defendant paid the Clerk of Court \$5,000.00 and posted the maximum  
12 possible bond, he remains confined by the Respondents on the island of Guam with the  
13 prohibition against his departure from Guam for any reason, with his passport held by the  
14 Respondents.

15 Previously, on December 9, 2006, the initial appearance and arraignment was  
16 held. No bond whatsoever was set, despite the request of Defendant's counsel. Defendant  
17 was sent to jail; and in fact, kept incarcerated in jail over Defendant's vigorous objections.  
18 On December 9, 2006, Defendant argued that the incarceration of Defendant was contrary  
19 to justice. Notwithstanding Defendant's arguments to be released on his personal  
20 recognizance or upon a reasonable bond, the Court ordered Defendant to prison without  
21 any bond. Defendant remained in Guam prison until bond was set and payment of  
22 \$5,000.00 was deposited on December 13, 2006.

4 **III. COURT MAY CONVERT THE HABEAS PETITION INTO**  
5 **A REQUEST TO CHANGE RELEASE CONDITIONS.**

6 The Court, pursuant to its inherent authority to control its own docket, may  
7 simply convert the Defendant's habeas request to be freed of all release conditions as an  
8 amendment pursuant to 18 U.S.C. § 3145(a)(2). The only issue to be decided is whether  
9 Respondents must immediately release, without any conditions, Defendant because of the  
10 mandate of customary international law. There is no dispute as to his status as a captain  
11 of a foreign-flag tuna fishing vessel charged by the United States for violation of the  
12 nation's fishery management laws, or that he has posted a reasonable bond. The legal issue  
13 is ripe for this Court's determination.

14 **CONCLUSION**

15 Defendant Lu's Motion to Modify his conditions of pre-trial release should be  
16 granted.

17 Dated this 11th day of January, 2007.

18 Respectfully submitted,


19 Attorneys for Petitioner/Defendant:  
20 WEN YUEH LU

21 BERMAN O'CONNOR & MANN

22 By:

  
23 DANIEL BERMAN

24 By:

25 THE LAW OFFICES OF MARK S. SMITH  
  
26 MARK S. SMITH

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